

Foto: Volker Emersleben

# **Basic communication paper**

Information about the final negotiation process

## Communication paper

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## 1. Key components of the final negotiation process

### **The contract award decision is based solely on the final negotiation process**

The final negotiation process will take place either as negotiations on an electronic negotiation platform or as structured parallel negotiations (for example, as negotiations involving an in-person auction and an auction<sup>1</sup> by e-mail).

Final negotiations will be based on the bid updated by the bidder for the purpose of final negotiations, which the bidder will submit when asked to do so by the contracting authority. Bidders must participate in the final negotiation process to remain in the in the evaluation.

### **Firm bids**

Only firm bids will be considered. All bids that comply with the specifications of the final negotiation process and other provisions and conditions of the contract award procedure will be considered legally valid bids. This is also true for improved bids. Price negotiations will be conducted in euros (€).

There will be no time to recalculate bids during final negotiations. Approved bidders will need to have calculated their lowest prices before negotiations begin. Bidders must submit only reasonable and adequate bids that will make it possible for them to provide the contracted service.

All bids must be meet legal and collective bargaining requirements and be adequate within the meaning of Section 54 of the Rules on Awarding Contracts in Transport, Drinking Water Supply and Energy Supply (SektVO).

### **Scope of the negotiation**

As far as in accordance with the applicable regulations permitted, can if necessary and at any time during the procedure, discussions to clarify the facts (professional and commercial) can be conducted.

According to the results of negotiations, the bidder is given opportunity, to adjust the offer.

## 2. Advantages of the final negotiation process

- ✓ The final negotiation process provides absolute transparency.
- ✓ Bidders alone influence the outcome.
- ✓ The rules are clearly communicated.
- ✓ The winners are determined according to rules, which are set in advance (the client is not able to intervene during negotiations).
- ✓ Virtual negotiations comply in full with the principles of contract award law, in particular competition, transparency and equal treatment in accordance with Section 97 of the German Act against Restraints of Competition.
- ✓ All negotiations comply with requirements under contract award law to conduct a negotiated procedure.

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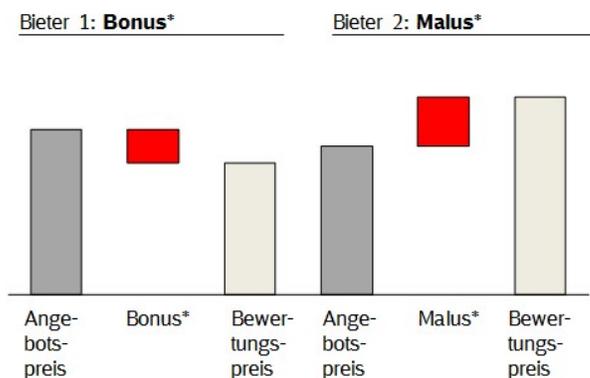
<sup>1</sup> See the glossary for different forms of auctions.

### 3. Comparing suppliers using a monetary evaluation system (if not based 100% on price)

#### About the evaluation system

All relevant qualitative and quantitative differences will be evaluated on a monetary basis to obtain an objective selection of the suppliers with the best cost-benefit ratio. The evaluation criteria used will be the criteria published in the EU-wide announcement or communicated in the contract award documents.

Only **evaluation prices**<sup>2</sup> will be exchanged during negotiations. The evaluation price is the bid price adjusted by your bonus or penalty. The **final bid price** will be paid<sup>3</sup>. The final bid price is the evaluation price adjusted by your bonus or penalty.



\* Euro

### 4. General provisions

All rules and conditions disclosed in the contract award procedure and associated bid documents are binding and will remain in effect during the final negotiation process. The following pages include additional rules for the final negotiation process.

#### Submitting bids

In negotiations involving auctions in person and auctions by e-mail, bids will be submitted using forms in each round of negotiations. Bidders will be bound to their bids once they sign the form. Not signing a form indicates that a bidder will not follow the client's recommendation and will not submit a bid to the client. In negotiations using an electronic negotiation platform, bids will be submitted using the Abocon auction portal.

#### Undecided provision

If there is no clear winner after the last round, rounds will continue to be conducted until only one best bid remains.

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<sup>2</sup> See "Bonus system" in the glossary.

<sup>3</sup> See "Bonus system" in the glossary.

In negotiations using an electronic negotiation platform, the time indicated in the auction tool is the time that counts. If there is no clear winner at the specified time, rounds will continue to be conducted until only one best bid remains.

### **Concluding negotiations**

Conclusion of an auction (either as negotiations using an electronic negotiation platform or an auction in person or by e-mail) will not immediately result in a contract between the client and the winner of the final negotiations. The results of the final negotiations do not constitute a contract award, and the client and auction winner are not contractually bound to the results.

If there is no economical outcome to the negotiations, the client reserves the right not to award the lot and to start a new contract award procedure for the lot after stopping the original award procedure.

### **Information at the end of the contract award procedure**

All of the bidders involved in the award procedure will be informed in advance in accordance with **Section 134 of the German Act against Restraints of Competition**.

### **Important general dates**

#### **Important dates after bids are submitted:**

<Month> <Day>, <Year>	Bidder/clarification meetings, detailed information about the way negotiations are designed and important dates (supplement to the basic communication paper)
<Month> <Day>, <Year>	Questions about the design of the negotiations (set hours or a question-and-answer forum)
<Month> <Day>, <Year>	The bidders indicate who will be involved in negotiations
<Month> <Day>, <Year>	If negotiations are being conducted using an electronic negotiation platform: informational e-mail from Abocon with the login for the negotiation tool
<Month> <Day>, <Year>	Improved bids must be received
<Month> <Day>, <Year>	If negotiations are being conducted using an electronic negotiation platform: bidders must check their starting bids in the negotiation tool
<Month> <Day>, <Year>	If negotiations are being conducted using an electronic negotiation platform: dry run (practice negotiations) in the negotiation tool
<Month> <Day>, <Year>	Live run in the negotiation tool or parallel negotiations by e-mail or in person

## 5. Special information for negotiations conducted using an electronic negotiation platform

Bidders will receive important standard information, such as the time remaining, end time, number of potential extension rounds, their current price and the current time, over the course of the virtual price negotiations. In addition, bidders will also be provided round-specific information, such as their ranking and how close they are to the best evaluation price, if applicable.

Virtual price negotiations, including the bids submitted, will be logged, which constitutes documentation. Bidders will be able to print their final bid. Bidders will not be able to tell how many bidders are involved or what prices are being offered during the virtual price negotiations.

Please make sure that only persons authorized to represent you participate in the negotiations. This contact will receive an invitation to participate in the auction as well as their login data from Abocon, the provider of the electronic negotiation platform. Make sure that your login works. If you have any problems, please contact the hotline without delay (Tel.: +49 (0) 4161 3072 272).

Detailed information about the negotiation tool is available on the supplier portal.  
<https://www.deutschebahn.com/de/geschaefte/lieferantenportal/informationsservice/Auktionen-1691606>

### 5.1 Dry run (practice run)

The dry run contains only sample data.

The purpose of the dry run is to give bidders the chance to learn the basic functions of the tool used for electronic price negotiations. The dry run is usually a shorter version of the live run. You can fill out the price sheets in the tool, and a sample result will be shown at the end of the dry run.

Please sign up on time because some events only last for a short time.

## 5.2 General information about the bidder platform

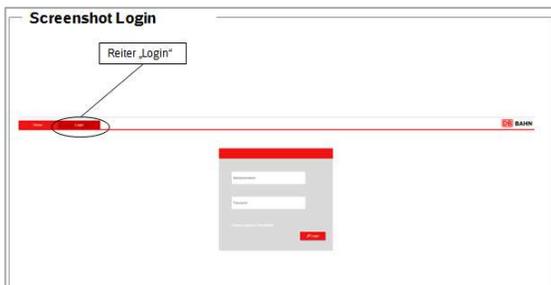
### 1. Home



The platform is available at:

[www.easyrfx.net/db](http://www.easyrfx.net/db)

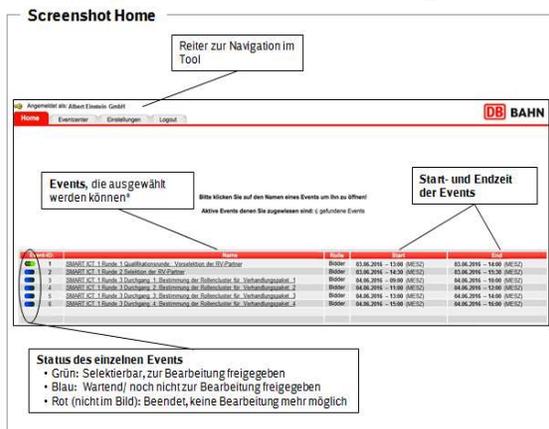
### 2. Login



Click the Login tab to go to the login page. Enter the user name and password you were sent by e-mail.

### 3. Home area

You can use the Home area to navigate between different contract awards.



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Click the Home tab to open the list of events (runs) that are currently available. Select the event for negotiations. You will then automatically go to the event center.

Note: Only the next step in negotiations will be available for you to edit (shown in green).

You can only edit rounds during the specified times communicated to you. You can view rounds and runs that have already been completed or have not been enabled yet, but you cannot edit them.

## 4. Event center

You edit price lists in the Event center. You must confirm all bids by clicking Submit bid. Only then will bids be considered for evaluation. Your evaluation will automatically be updated every five seconds and when you enter a new price. Manual updates can be made at any time.

Example of a price sheet with descending prices

**Ausschnitt Preisblatt**

Ranginformation zu den einzelnen Positionen

Pos.	Bezeichnung	Einheit	Preis in Euro	Rang in Position
1	Wahlzettel des 1. bis 9. gewerkschaftlichen	Stück	200,00	1
2	Wahlzettel 1. bis 9. gewerkschaftlichen	Stück	200,00	2
3	Wahlzettel 10. bis 19. gewerkschaftlichen	Stück	200,00	1
4	Wahlzettel 20. bis 29. gewerkschaftlichen	Stück	200,00	1
5	Wahlzettel 30. bis 39. gewerkschaftlichen	Stück	200,00	1
6	Wahlzettel 40. bis 49. gewerkschaftlichen	Stück	200,00	1
7	Wahlzettel 50. bis 59. gewerkschaftlichen	Stück	200,00	1
8	Wahlzettel 60. bis 69. gewerkschaftlichen	Stück	200,00	1
9	Wahlzettel 70. bis 79. gewerkschaftlichen	Stück	200,00	1
10	Wahlzettel 80. bis 89. gewerkschaftlichen	Stück	200,00	1
11	Wahlzettel 90. bis 99. gewerkschaftlichen	Stück	200,00	1

Button zur Bestätigung der eingegebenen Preise (alle Angebote müssen immer bestätigt werden!)

Example of negotiations with ascending prices

**Ausschnitt „Verhandlung mit steigenden Preisen“**

Annahme des Angebotes

Aktuelles Angebot des AG (steigt alle 15 sek)

Ihr Gebot: 100 000 EUR

Bereich für Status-Informationen

You will be able to print out the prices you bid at the end of the auction.

You will be able to log in using your user name and password to view the results until the end of the month following the auction.

## 6. Procurement auction glossary

- **Auctions and internal transparency:** In addition to more effective pricing, auctions also have the advantage of greatly improving the internal transparency of contract award decisions. The auction result clearly documents why a particular supplier won, which is not the case with separate supplier negotiations. This increases auditability for purchasing.

- **Auctions and supplier partnerships:** Auctions must be prepared carefully and with good judgment whenever there are close supplier partnerships, or suppliers are heavily involved in the product development process or product maintenance. In these cases, the price is not the most important criterion. It is just one of many criteria, such as the suppliers' reliability, innovative capacity and flexibility.

- **Bonus system:** In all cases where suppliers or their bids are not directly comparable, auctions must be conducted based on the price and bonus or penalty (**evaluation price**), not just the bid price. Bonuses and penalties are used to weight supplier bids. For example, if a contract is Ex Works, a nearby supplier with low additional transport costs receives a bonus, while a supplier in another country with above-average transport costs is penalized. Bonuses and penalties help offset the differences among suppliers to ensure that bids are comparable in the auction. If bonuses and penalties cannot be calculated for criteria such as price modules, delivery periods, warranty periods or other contract award aspects until the final bids are submitted in the auction, the auction will be a multidimensional action (also referred to as **multi-attribute or parametric auctions**). In other words, bidders will be able to improve the price and other criteria in each bid submitted. Formulas for bonuses and penalties, which will be specified in advance, will be used during the auction to calculate which bid is the best overall for procurement.

- **Brazilian auction:** Brazilian auctions are based on bids for the service or quantity owed. The buyer specifies what they are willing to pay before the auction starts. Suppliers then increase the order by improving the order volume. The supplier that offers the highest volume or best service for the specified amount wins the contract. This type of auction is good especially for creative services, such as marketing agencies and strategy consultants.

- **Collusion:** Suppliers are said to collude when they strategically concentrate on a niche in a bid or stay out of a niche to prevent overlapping with competitors. Often no illegal agreements (**trusts**) are needed. In many markets competitors simply need to tacitly act in concert, which is where the term **collusion** comes from (from the Latin for "to play together"). Caution: Whereas collusion in legal and more general contexts means illegal collaboration between parties, economists use the term in the specific context of competition to refer to conduct that reduces competition but is still legal, in contrast to an illegal trust.

- **Dutch auction:** Dutch auctions are a type of clock auction. They are based on rounds with prices set by the buyer, which suppliers can confirm. However, in Dutch auctions, the price increases instead of decreases. The buyer indicates a starting price at which, presumably, no supplier would be willing to perform the contract. The price is then increased incrementally. The first supplier willing to accept the price wins.

- **Dynamic English auction:** The most popular type of auction used is the **English auction**. Bidders actively submit their bids, are able to see the prices bid by competitors directly (anonymously) or receive rankings based on competitors' prices, and improve their bid until no lower-price bid is submitted.
- **English auction:** The English auction is the oldest and best known type of auction. Suppliers place or confirm bids for a contract that is specified in advance. They then continuously improve their bids after receiving signals about the competition (such as competitors' prices, competitors' confirmation of clock increments, their own ranking or a traffic light color). The supplier that submits or confirms the last and lowest bid wins.
- **First-price sealed bid auction (FPSB):** An auction in which bidders submit a sealed bid once. The bidder (or bidders) with the lowest bid (or bids) wins the auction.
- **First-price sealed bid auction with ranking:** In this version of the **first-price sealed bid auction** the ranking of each of the competitors, not the price, is disclosed to the bidders after the auction to indicate which bidder won. This is strategically important not for the final round but for knock-out rounds within an auction process with multiple phases.
- **Hong Kong auction:** Hong Kong auctions are similar to Japanese auctions, but with one key difference: the last bidder that exits the arena is still considered one of the winners. The clock in a Hong Kong auction stops at the next-to-last bidder, especially when the goal is to have two winners.
- **Japanese auction (or English clock auction):** Japanese auctions are based on rounds. In each round all bidders must confirm a descending price, which the buyer determines in advance, or exit the arena. Rounds are repeated until only one supplier remains. If the smallest possible clock increments are used, the Japanese auction is theoretically the purest form of English auction.
- **Procurement auctions:** There are two ways auctions can be used. **Forward auctions** and **reverse auctions**. Reverse auctions work in the opposite way of forward auctions. Unlike in forward auctions, in which all participants bid on an identical item, services of bidders participating in a reverse auction are bidder-specific and can vary from one bidder to the next. Therefore, there must be a way to ensure that the services offered by suppliers can be compared. If this is not possible, the auction result will be distorted, and the supplier with the lowest price but potentially poorer service could win instead of the supplier with the best cost-benefit ratio. The comparability of services being auctioned is usually ensured by a **bonus system**, which, in the context of public procurement law, is equivalent to calculating the most economical bid.
- **Reserve:** The auctioneer reserves the right not to award the business if the price offered does not meet the reserve. In contrast, the auctioneer is required (or in a commercial context, he or she should commit voluntarily) to award the contract to the winner of the auction if the reserve is met.

- **Second-price sealed bid auction (SPSB):** Bidders submit sealed bids once, and the bidder with the lowest bid wins the auction but receives the second-lowest price for its services.